Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1256

MICHAEL BARONE, *Petitioner*

v.

SUSAN GRAHAM BARNES, JUDGE, et al.,
Respondents

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Civil Action No. 76 M 58

MICHAEL BARONE,
Plaintiff,

v.

HON. SUSAN GRAHAM BARNES, HON. RICHARD D. LAMM, HON. J. D. MacFARLANE, NICOLETTA MARIE BARONE,
Defendants.

MEMORANDUM AND ORDER

This action was brought challenging the constitutionality of pending state court proceedings for the dissolution of plaintiff's marriage. The relief sought includes a declaratory judgment ruling the Colorado Uniform Dissolution of Marriage Act, 1973 C.R.S. §§ 14-10-101 *et. seg.*, to be unconstitutional on its face and as applied by the courts, in addition to the issuance of a permanent injunction restraining the state court judge from proceeding further with the dissolution action. Plaintiff requests the convening of a three-judge court, pursuant to 28 U.S.C. §§ 2281, 2284. All defendants have moved for dismissal.

Four contentions are advanced by the plaintiff in support of his complaint. It is asserted that the statute

impairs the obligations of his marriage contract in violation of Article 1, § 10 of the United States Constitution; that it constitutes authority for the deprivation of property without due process of law, in violation of the Fifth and Fourteenth Amendments; that it discriminates against males, thereby contravening the Equal Protection Clause; and, finally, that the statute authorizes the imposition of involuntary servitude in violation of the Thirteenth Amendment.

The first three issues have been previously raised and disposed of in *Harrington v. Shannon*, No. 75-738 (D. Colo. Jan. 21, 1976). I found in that case that the contentions made by a similarly situated plaintiff were insufficient to raise a substantial federal question, and that consequently there was no need to convene a three-judge court. For reasons stated in the Memorandum and Order For Dismissal, the action was dismissed for lack of jurisdiction and failure to state a claim upon which relief can be granted. I consider *Harrington* to be controlling as to the first three claims asserted in the case at bar.

Plaintiff's fourth contention, that the Colorado Dissolution Statute violates the constitutional provision against involuntary servitude, is insubstantial. I concur with, and adhere to, the reasoning of the Colorado Supreme Court in its conclusion that maintenance and child support obligations are not the equivalent of involuntary servitude proscribed by the United States Constitution. *In Re Marriage of Franks*, 542 P.2d 845 (Colo. 1975).

The reasoning and conclusions set forth in *Harrington* obtain with equal force to the Thirteenth Amendment claim. It is therefore concluded that the defendants' motions to dismiss for failure to state a claim should be granted and it is

ORDERED that the complaint and this civil action are dismissed.

Dated: July 16, 1976.

BY THE COURT:
Richard P. Matsch, Judge
United States District Court